

INVITATION FOR BIDS
(IFB)
SET-A-SIDE FOR SMALL BUSINESSES

Issue Date: March 3, 2011 **IFB#** 724-11007

Title: **SET-A-SIDE FOR SMALL BUSINESSES – Elevator Preventive Maintenance and Repair Services**

Commodity code: **902-15**

Issuing/Using Agency: Commonwealth of Virginia
Catawba Hospital
P. O. Box 200
5525 Catawba Hospital Drive
Catawba, Virginia 24070-0200

Period of Contract: From April 1, 2011 through March 31, 2012 *(Renewable).

Sealed Bids Will Be Received Until 1:00 p.m., March 22, 2011 For Furnishing Services Described Herein And Then Opened in Public (in the Purchasing Office, Building 16). All Inquiries For Information Should Be Directed To The: Office of Purchasing & Contracting. Phone: 540-375-4360. IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO: CATAWBA HOSPITAL, OFFICE OF PURCHASING & CONTRACTING, BUILDING 16, 5525 CATAWBA HOSPITAL DRIVE, CATAWBA, VIRGINIA 24070-0200

Submit Comments Questions	Interested parties may submit written comments or questions on any aspect of this IFB on or before 2:00 p.m., Friday, March 11, 2011. Please submit your comments and questions to Robyn J. Wright by email: robyn.j.wright@dbhds.virginia.gov A list of questions and answers will be posted to the DBHDS website by March 15, 2011. No questions will be answered in any other format.
Copies of IFB and Answers to submitted Questions	May be obtained at www.dbhds.virginia.gov (Administrative Services; Procurement)

In Compliance With This Invitation For Bids And To all The Conditions Imposed Therein, The Undersigned Offers and Agrees To Furnish Services At The Price(s) Indicated In Section IV, Pricing Schedule.

LICENSED CLASS:		VA CONTRACTOR #:		SPECIALTY:	
Name and Address of Firm:			Date:		
			By:		
				Printed Name	
			Signature in Ink:		
Zip Code:			Title:		
FEI/FIN No¹ :			Telephone No.:		
Are You A Registe			Yes <input type="checkbox"/>	Date Completed: _____	No <input type="checkbox"/>
			Yes <input type="checkbox"/>	Certification No.: _____	No <input type="checkbox"/>

¹ Contractor is REQUIRED to provide a Federal Employer Identification Number, a Federal Identification Number or, in the absence of these numbers, his Social Security Number. This information is being collected for IRS reporting.

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Note: this public body does not discriminate against faith based organizations in accordance with Code of Virginia § 2.2-4343.1 or against a Bidder because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment.

**CATAWBA HOSPITAL
CATAWBA, VIRGINIA**

- I. PURPOSE:** The purpose and intent of this Invitation for Bids is to establish a contract with one qualified source to provide full service maintenance, including repairs and enhancements, for elevators as specified on **Attachment A** for Catawba Hospital, an Agency of the Commonwealth of Virginia; henceforth referred to as "the Hospital".

II. SCOPE OF WORK:

- A. **REQUIREMENTS:** The Contractor shall perform full service maintenance on all elevators listed on below, for a one (1) year period, April 1, 2011 through March 31, 2012 with four (4) optional one-year contract renewals through March 31, 2016.

BUILDING #/NAME	NUMBER OF ELEVATORS	PRIMARY PURPOSE
15 - Nichols	2	Passenger
15 - Nichols	1	Freight
16 - Dietary	1	Freight
17 - Carroll	1	Passenger

B. **GENERAL SPECIFICATIONS:**

1. The Contractor shall furnish all material, labor, supervision, tools, supplies and equipment necessary to provide full maintenance services, including inspections, adjustments, tests, parts replacement, and repairs necessary to keep the elevators in continuous use at their **originally specified design and performance ability** (speed, capacity, safety, efficiency, etc.) as specified by the original equipment manufacturer (OEM) **or to any enhancement provided by upgrade and/or refurbishment**. All tests (safety and other), inspections, maintenance adjustments, repairs, and any enhancements or modifications to the elevators or associated equipment shall be performed as recommended and in compliance with the current editions of Uniform Statewide Building Code, ANSI/ASME A17.1, Safety Code for Elevators and Escalators; A17.2, Inspector's Manual for Elevators and Escalators; A17.3 Safety Code for Existing Elevators and Escalators, and the applicable National BOCA Building Code. Contractor shall use new manufacturer's parts and manufacturer's lubricants or Hospital approved equivalent.
2. The Contractor shall obtain all necessary licenses and/or permits required to perform this work. **The Contractor shall forward copies to the Hospital for the contract files.**
3. The Contractor shall provide personnel fully trained, holding current journeyman's or permanent mechanic license and possessing minimum work related experience in the elevator trade with at least four years of recent (within the last six years) experience in the operation and maintenance of the similar elevators as described above. In addition, elevator mechanics shall be certified through the NEIEP (National Elevator Industry Education Program). An NEIEP certified elevator mechanic shall be present, supervise, and perform final inspection of any work performed under this contract. Employees shall be licensed to work in the Commonwealth of Virginia. **Bidders shall furnish experience information for those technicians who are to be assigned to this contract as requested on Attachment B.**
4. The Contractor shall have in its possession throughout the life of the contract all diagnostic equipment and an adequate supply of spare parts necessary to fully maintain, test, repair, adjust, or reprogram the system. **A list shall be provided to the Hospital within thirty (30) days after contract award.**

5. The Contractor shall be responsible for all items presently installed on elevators.
6. The Contractor shall perform all work and non-emergency tests, except for emergency callback service, during regular working hours of regular working days, which are 8:00 A.M. to 5:00 P.M. Monday through Friday, excluding State holidays. *All monthly maintenance work shall be performed between the first and fifteenth day of each month.*
7. On each visit, during regular working hours, **the Contractors' employees shall check in and out at the Buildings & Grounds Office, noting arrival and departing times, and turn in all work order tickets** for tests, maintenance, and repairs into the Hospital's Buildings and Grounds Office. The work order tickets shall furnish the following information:
 - a. Name and address of Contractor and Contract Number.
 - b. Name of Contractor's employee in charge of the work.
 - c. Dates work was performed and hours expended.
 - d. Description of work performed and equipment identification.
Service ticket shall identify the problem, description of corrective measures taken and date and time unit was returned to regular service.
 - e. Signature of Contractor's employee and signature of Hospital's representative.

During non-regular working hours, **the Contractors' employees shall check in and out with the Hospital Switchboard, noting arrival and departure times,** and the same information shall be given to the Nursing Supervisor. *FAILURE to turn in required maintenance and service tickets for each visit shall constitute a reason for nonpayment and/or withholding of monthly maintenance funds.*

8. The Contractor shall immediately notify the Hospital in writing of the existence or the development of any defects in, or repairs required to, the elevator which the Contractor considers are not his responsibility, and shall furnish a written estimate, when requested, of the cost. Final determination of responsibility shall be made by the Hospital.
9. The Contractor shall be responsible for all incidental charges including, but not limited to, parking, tolls, mileage, phone calls, etc., on straight time and on overtime work.
10. The Contractor shall correct equipment malfunctions the same day that the service call was issued. If circumstances preclude resolution of the problem that day, the Hospital shall be notified with an explanation of the delay, followed by a written letter documenting the reasons for the delay.
11. Under no circumstances shall any shutdown or breakdown last longer than two (2) working days from initial notification to the Contractor, without prior approval of the Hospital's representative.
12. **The Contractor shall within three (3) weeks after entering this contract, give written notice to the Hospital of all defects found during inspection of this equipment.** After review of the discrepancy list and approval by the Hospital's representative, the Contractor shall correct all defects within fifteen (15) calendar days and notify the Hospital in writing that the deficiencies have been corrected and re-inspection can be made.
13. The Contractor shall maintain a complete set of current, legible schematic wiring diagrams in the elevator machine room for each elevator. If the Hospital does not have the required schematic wiring diagrams available at the time of contract award, it shall be the responsibility of the Contractor to provide same at no cost to the Hospital. Any and all schematic wiring diagrams provided by the Contractor shall become property of the Hospital. All circuit changes made shall be clearly marked up on each applicable wiring diagram.

14. The Contractor shall assign the same technician (one regular and one substitute) for routine maintenance work. If either person leaves their employment, another person shall be assigned on the same basis and the Hospital notified.
- C. GUARANTEE: All work under this contract shall be guaranteed against defects resulting from the use of substandard materials, equipment, or workmanship for one year from the date of final acceptance by the Hospital. Any work that has to be corrected due to the Contractor's faulty workmanship, equipment, tools, or materials shall be done at no additional expense to Catawba Hospital.
- D. PERFORMANCE LEVELS: The following performance levels shall be maintained at all times by the Contractor at no extra cost to the Hospital:
1. Contact speed and brake to brake flight time shall be maintained as originally installed and adjusted.
 2. Leveling accuracy - Car level at each landing shall be maintained at all time; leveling to be corrected if necessary.
 3. Opening and closing times, door close torques of all cars shall at all times be maintained within the limits of ANSI A17.1 Code and applicable National BOCA Building Code with minimum of stand open time consistent with traffic demands at each floor.
 4. Door reversal on all elevators equipped with mechanical safety shoes shall always be initiated with the stroke of the shoe.
 5. Door reversal on all elevators equipped with optical/electronic shall always be initiated when the "beam" is broken.
 6. Variable car and hall door open times shall be maintained in accordance with original field adjustments. Deviations from this shall not be permitted unless requested and/or approved by the Hospital's representative.
 7. Elevators operating under Group Supervisory Systems shall operate at all times in accordance with design specifications as originally installed. The Contractor shall be required to test these systems at not less than twelve (12) month intervals or as requested by the Hospital's representative. Contractor shall submit to the Hospital test data including performance levels of system and proof that variable and fixed features are operating properly and all circuits and time settings are properly adjusted. All features that are pertinent to efficient handling of the building's traffic patterns shall be put into operation and properly adjusted. This check and subsequent adjustment shall not interfere with normal operation.
 8. Within three (3) months of contract award and yearly thereafter, a computerized elevator analyzer or similar type event recorder shall be utilized to accurately record the hall waiting time at each landing and other data necessary to establish that the Building #15 system is operating at peak efficiency. Results shall be submitted and be labeled as to floor, time, date and identification of all other data and shall be delivered together with an analysis of the tapes/disks to the Hospital.
 9. Minimum rated load.
 10. Governor tripping speeds.
 11. Stopping distance for car and counterweight safeties.
 12. Factors of safety for suspension of wire ropes for power elevators.
 13. Impact of buffer supports.

E. TESTS AND INSPECTIONS:

1. The Contractor shall be responsible for the following tests and inspections:
 - a. Elevators shall be examined monthly between the first and fifteenth day.
 - b. *The Contractor shall provide the Hospital a listing of all required inspections and safety checks with their frequency, within 30 days of the contract award.*
 - c. This inspection shall be used to ensure a safe and efficient level of operation and all work relative to the cleaning, lubrication, and adjustment of equipment that is necessary for the desired level of operation that should be performed. The Hospital representative will review and approve the initial checklist(s). All checklist revisions will also be reviewed and approved prior to use.
 - d. The Contractor shall post a check chart as directed by the Hospital's representative. This check chart shall list each elevator component showing schedule of manufacturer's recommended frequency of inspection and Preventive Maintenance of each component on a weekly, monthly, quarterly, semi-annual, annual or other frequency. Entries shall be made to indicate the status of scheduled items of maintenance work performed. The check chart shall be kept up to date at all times and must be initialed and dated by the Contractor's employee to indicate that the work has been accomplished. Check chart shall be available for the Hospital's review.
 - e. The Contractor shall perform an annual safety test of all elevators. Safety tests and other test and inspections shall be performed by the Contractor as recommended and required by Uniform Statewide Building Code, current ANSI/ASME A17.1 and A17.2 and applicable National BOCA Building Codes.
 - f. Contractor shall attach tags as required by Code after each test.
 - g. **Contractor shall examine monthly all safety devices and governors and conduct an annual load safety test. When required, Contractor shall perform a 5-year full load, full speed test on each passenger elevator to include the safety mechanism, overhead speed governors, car and counterweight buffers. Test the timing & operation of overload relays under simulated emergency conditions. Inspect and test safety switches and circuits in the machine room, hoist way, elevator car and pit. Perform buffer compression tests if an oil buffer is used.** At no additional cost to the Hospital, the Contractor shall provide a certified inspector, personnel, and equipment necessary to perform required safety tests for both geared and hydraulic elevators. The car balance shall be checked and the governor set. If required, the governor shall be recalibrated and sealed for proper tripping speed. *A certificate of certification shall be delivered to the Hospital representative within seven (7) days of each test.*
 - h. The Contractor shall perform any repairs or adjustments to complete tests and return elevators to service at no additional cost to the Hospital.
 - i. **The Contractor shall submit a document after completion of all required tests with the detailed test results to the Hospital within seven (7) days of each test.** The Contractor's standard form may be used with prior approval of the Hospital if it contains all the information necessary.
 - j. All elevators provided with Firefighters' service shall be subjected monthly to Phase I recall and a minimum of one floor operation on Phase II to assure the system is maintained in proper operating order. **A written record of findings on the operation shall be provided within seven (7) days by the Contractor** and kept by the Hospital's representative as outlined by **Attachment C**.

- k. All tests or inspections that will remove the elevators from normal operation shall be scheduled ten (10) working days in advance with the Hospital's representative.

F. FULL SERVICES ELEVATOR MAINTENANCE:

1. **Preventive Maintenance:** Contractor shall provide all labor, tools, equipment, and materials necessary for the satisfactory performance of regularly scheduled preventive maintenance servicing. At a minimum, elevator maintenance shall be provided once per month on all elevators and shall include, but not be limited to, routine service maintenance, testing, examining, cleaning, adjusting, and lubricating all machine, motor, generator, and controller parts, and all accessory equipment as necessary for the proper and safe operation of the elevators.
 - a. The Contractor shall examine the equipment at each interval. The examination shall be designed to identify equipment conditions for the purpose of determining corrective actions that may be required to maintain the normal and safe operation of the equipment. If at any time during the Contractor's examination any elevator is found to be unsafe, the Contractor shall be responsible to discontinue elevator operation and **notify the Hospital immediately followed by a written report of the conditions encountered, (See Section III, Item K. Reports).** This routine examination shall be in accordance with ANSI/ASME A17.1 and A17.2 and applicable National BOCA Building Codes.
 - b. The Contractor shall regularly perform the following maintenance on all elevators:
 1. Monthly and systematically clean, examine, adjust, lubricate as required and if conditions warrant, repair and replace: machine, worm, gear, thrust bearings, drive sheave, drive sheave shaft bearings, brake pulley, brake coil, brake contact, brake linings and component parts.
 2. Machine motor, motor windings, rotating element, and bearings.
 3. Controller, selector and dispatching equipment, all relays, solid state components, resistors, condensers, transformers, contacts, leads, dashpots, time devices, computer devices, CRT devices, selector tape or wire and mechanical and electrical driving equipment.
 4. Governor, governor ropes, governor sheave and shaft assembly, bearings, contacts and governor jaws.
 5. Deflector or secondary sheave, bearings, car and counterweight buffers, car and counterweight guide rails, top and bottom limit switches, governor tension sheave assembly, compensating sheave assembly, counterweight and counterweight guide shoes including rollers or gibs.
 6. Hoistway door interlocks, hoistway door hangers, bottom door guides and auxiliary door closing devices. Clean hoistway including all equipment located in or moving through the hoistway, car top, car sling, safeties, appliances, pits, sills, door tracks, and hangers.
 7. Automatic power operated door operator, car door hanger, car door contact, door protective devices, load weighting equipment, car frame, car safety mechanism, platform, car guide shoes including gibs and rollers.
 8. Car operating panel(s) and equipment, hall lanterns, hall buttons and signal devices.
 9. Furnish lubricants specified for the various lubrication needs.

10. Maintain a supply of parts and materials in each machine room for the performance of routine preventative maintenance.
11. Check all indicator lights and call buttons and relamp.
12. Check oil level and add oil when necessary.
13. Check and repair if necessary; alarm bell, emergency lights, and telephone and log this test on check chart.
14. Empty drip pans and discard oil within environmental laws.
15. Check and repair if necessary; door reopening devices, and car ventilation.
16. Clean pit and machine room floor as well as car doors, car and hatch door tracks and all visible equipment.
17. Keep car emergency light units in an operable condition at all times, test special emergency (fireman's) service and emergency power circuits, where provided in accordance with Code requirements.
18. Notify the Hospital's representative by telephone or in person before beginning maintenance work. Failure to notify the Hospital's representative prior to beginning work shall result in violation of security procedure and also shall result in the Contractor repeating their maintenance requirements.

For Hydraulic Elevator: The Contractor shall also maintain:

19. Cylinder head, plunger exposed surfaces, plunger gland and packing, pump, exposed piping, fittings and flexible pipe connections, operating controls, solenoids, check and relief valves, valves, gauges and tanks.
20. Belts, pulleys and bearings.
21. Repair and replace conductor cables and hoistways and machine room wiring.

For Tension Elevators: The Contractor shall also:

22. Furnish and install new wire ropes as often as it is necessary to maintain an adequate factor of safety; to equalize the tension on all hoisting ropes, repair and replace conductor cables and hoistway and machine room wiring.
2. **Full Service Repairs:** The Contractor shall provide all labor, tools, equipment, materials and parts for the satisfactory performance of elevator repairs, to keep the elevators in accordance with the Performance Levels and Standards as specified herein. Schedule of repair work shall be approved by the Hospital's representative prior to its commencement. All labor, materials, and parts required for the performance of this work shall be included in the lump sum price for Full Service Maintenance.
- a. **The Contractor shall have repair service available to Catawba Hospital 24 hours per day, 7 days per week. *For all repair calls, the Contractor shall be on the job within two (2) hours of notification.***

- b. All wiring and circuit changes and modifications made by the Contractor during his work shall be clearly indicated on the schematic wiring diagram for that elevator.

G. EXTRA REPAIR SERVICES:

1. Repairs that are not included in Full Service Maintenance may be paid for on an as needed hourly labor rate basis according to the unit prices included in Section IV. PRICING SCHEDULE. Transportation, travel time, and other expenses will not be paid for separately, therefore must be included in the hourly labor rates.
2. Materials, parts and supplies required in the performance of Extra Repair Services may be provided by the Contractor and shall be billed at the Contractor's actual supplier invoiced cost.
3. The Contractor shall be required to provide an estimate of the cost and descriptive information of the necessary repairs. Repair work shall be approved and scheduled by the Hospital's representative prior to its commencement. ***Catawba Hospital reserves the right to bid separately any Extra Repair Service to the elevators and reserves the right to purchase repair parts and materials from other sources.*** A minimum of two (2) hours service shall be allowed and the overtime rate shall apply for these repairs when they are performed outside of regular working hours of which are 8:00 A.M. to 5:00 P.M., Monday through Friday. Overtime work shall be approved ahead of time by Catawba Hospital's representative.

H. WORK EXCLUDED:

The following work for all elevators is specifically excluded from the full-maintenance service contract. However, this work may be negotiated under this contract as extra work, as needed, for repairs, replacement, and enhancement/upgrades to elevator equipment to meet all applicable Federal and State codes, beyond the maintenance services provision of the contract. ***Catawba Hospital reserves the right to bid separately any Extra Repair Service to the elevators and reserves the right to purchase repair parts and materials from other sources.***

1. Repair or replacement made necessary due to obvious negligence or misuse of the equipment by persons other than the Contractor, its representatives or its employees. Any claims by Contractor for negligent or abuse damage must be verified by Catawba Hospital's representative before repair and/or the Contractor representative leaving Catawba Hospital's campus.
2. Installation of new attachments that may be required or recommended by insurance agencies or government authorities.
3. Repair or replacement of cab enclosures, hoistway enclosures, door frames and seals, cab lighting, machine room lighting, cab tile or carpet.
4. Replacement of underground hydraulic piping or hydraulic cylinders.
5. Any repairs because of negligence, vandalism or misuse shall be billed according to the labor rate specified in Section IV, PRICING SCHEDULE. Premium labor rates will be allowed only for overtime work. Parts shall be billed at the Contractor's actual supplier invoiced cost.
6. **For the purpose of clarification, any item not specifically excluded shall be considered the Contractor's responsibility under the Full Service Maintenance.**

I. EQUIPMENT OUT OF SERVICE:

1. All tests, inspections, or maintenance repairs that will remove an elevator from service shall be scheduled in advance with the Hospital's representative. The Contractor shall comply with the following procedures when an elevator is removed from service for any reason:

Notify the Hospital's representative either by telephone or in person, at least ten (10) working days in advance, before removing the elevator from service (If work requires more than one day, daily notification shall be made to the Hospital's representative).

2. When an elevator is taken out of service, a sign must be placed at each opening notifying the building occupants that the elevator is being serviced. The Hospital's representative will provide the signs.

J. CALLBACKS: The Contractor shall provide callback services as follows: Callback service is defined as requests for service from the Hospital to correct **any** elevator problem or condition which needs attention before the Contractor's next scheduled preventative maintenance visit.

1. Callback service during regular working hours shall be provided within a maximum of **two (2) hours** from the time of request, at no additional charge.
2. Emergency callback service after normal working hours shall be provided within a maximum of **two (2) hours** from time of request.
3. Emergency callback service or repairs falling outside of full service maintenance and repairs shall be accomplished at the overtime hourly rates specified in Section VI, PRICING SCHEDULE. All overtime service calls shall be handled by one mechanic only unless approved in advance by the Hospital. If regular time work must be carried over and the Contractor wishes to continue work beyond normal working hours, Monday through Friday, 8:00 A.M. to 5:00 P.M., except State holidays, authorization must be obtained from the Hospital before proceeding.

K. REPORTS:

1. *A written report shall be submitted to the Agency Representative upon the completion of, and on the same day as, Full Service Elevator Maintenance and/or Extra Repair service call.* The report may be made on the Contractor's form, to be approved by Catawba Hospital and shall include the following:
 - a. Company Name; Mechanic(s) Name(s); Assistant(s) Name(s) (if applicable); Time and Date of Service or Repair Work.
 - b. Identification of Elevator Serviced or Repaired; Checklist of Examinations Made and Work Performed; Time Worked; Type and Quantity of Material and Parts Used.
 - c. Certification that work was performed in accordance with the specifications, signed by the Mechanic.
 - d. Needed repair work, problems, failures or malfunctions discovered during repair work.
 - e. Recommendations for extra inspection and testing if required by ANSI/ASME A17.1 and applicable National BOCA Building Codes.
 - f. *Each calendar year quarter, the Contractor shall submit a consolidated report of the previous three (3) months service for maintenance and repairs. The report is to be submitted to the*

Hospital's representative no later than two weeks after the concluding quarter (Mar., Jun., Sep., Dec.). The report shall contain and be summarized by elevator, dates of service, name of service, mechanics/assistants, service actions, repair parts and consumables and charges. The report format shall be approved by the Hospital's Representative within thirty (30) days of the contract award.

L. **RECORDS:** The Contractor shall keep and maintain a file on each elevator to contain accurate records of all maintenance work, repairs, including trouble calls, parts used, and all wiring and circuit changes and modifications made. These records are to be made available upon request by Catawba Hospital.

M. **PERFORMANCE IMPROVEMENT PROGRAM:** *At no additional cost, the Contractor shall establish and follow a performance improvement program for the purpose of identifying and correcting deficiencies in the quality of services performed before the level of service becomes unacceptable. This program may involve periodic inspections or supervision of work performed by the Contractor, or any other program to insure a sufficient level of service. This program shall be submitted by the Contractor and approved by the Hospital's Representative within thirty (30) days of the contract award.*

N. **OTHER REQUIREMENTS:**

1. **Parking:** All Contractors' vehicles shall be parked in accordance with directions received from the Hospital representative.
2. **Check-in and Out Procedures:** During the Hospital's normal working hours, the Contractor personnel shall check in with the designated Hospital representative immediately upon arrival to the Hospital. Contractor personnel shall sign in noting arrival time, pick up identification badge, and pick up any keys they will need for access. Check out during Hospital normal working hours shall include signing out and noting departure time, turning in ID, and return of any keys issued. Outside of Hospital's normal working hours, Contractor personnel shall report to the Catawba Hospital Switchboard and/or the Nursing Supervisor to sign in and out, noting times.

III. **COMPLIANCE WITH HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA):**

In the course of carrying out contractual services, the Contractor and its employees will be in areas occupied by patients of Catawba Hospital where they could possibly be subject to patient-related information either directly or indirectly. Any information regarding any patient must be held in strict confidence. By signature on this Agreement and the Business Associate Agreement (Attachment B), the contractor agrees to comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and, in the performance of this contract (agreement) will:

- Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this contract or as required by law;
- Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by the contract;
- Report to the Catawba Hospital any use or disclosure of PHI not provided for by this Contract (Agreement);
- Mitigate, to the extent practicable, any harmful effect that is known to the contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of this contract.
- Impose the same requirements and restrictions on its subcontractors and agents;
- Provide access, at the request of the Catawba Hospital, and in the time and manner designated by the Catawba Hospital, to PHI in a Designated Record Set, to the Catawba Hospital or, as directed by the Catawba Hospital, to an individual in order to meet HIPAA requirements.

- Make available PHI for amendment and incorporate any amendments to PHI;
- Document and provide to Catawba Hospital information relating to disclosures of PHI as required for the Catawba Hospital to respond to a request by an individual for an accounting of disclosures of PHI in accordance with the HIPAA Privacy Rule;
- Make its internal practices, books, and records relating to use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services Secretary for the purposes of determining compliance with the HIPAA Privacy Rule;

At termination of the contract, if feasible, return or destroy all PHI received from, created or received by the Contractor on behalf of the Contracting Agency (Catawba Hospital) that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

IV. PRICING SCHEDULE:

The Bidder agrees to provide the services in compliance with the scope of work and terms and conditions at the following price:

PART 1. - Total full service maintenance (testing, inspections and repairs) as detailed for all elevators listed in this Invitation For Bids. This price shall include all labor, travel time and expenses, materials, supplies, and equipment needed for this job for Catawba Hospital.

Full service for one year (April 1, 2011 through March 31, 2012). \$ _____

PART 2. - Work falling outside full service maintenance and repair:

Work performed Monday-Friday, 8 A.M. - 5 P.M. shall be paid at regular rate.

Work performed Monday-Friday, 5 P.M. - 8 A.M.; Saturday and Sunday shall be paid at regular rate plus one-half rate.

Technician Regular Rate \$ _____ per hour per technician.

Technician Asst. (helper) Regular Rate \$ _____ per hour per technician.

NOTE: For special repairs/replacements/upgrades all chargeable elevator parts shall be billed at the Contractor's supplier's actual invoice cost.

V. METHOD OF PAYMENT: The Contractor shall be paid on the basis of invoices submitted. All invoices shall be submitted to:

Catawba Hospital
Attention: Julie Adkins
P. O. Box 200
Catawba, Virginia 24070

Catawba Hospital is exempt from federal excise and all state and local taxes. Such taxes shall not be included in the contract price. A tax exemption certificate will be furnished on request of the Contract Officer.

VI. **GENERAL TERMS AND CONDITIONS:**

1. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the vendors tab.
2. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
3. **ANTI-DISCRIMINATION:** By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in a. and b. below apply:

- a. During the performance of this contract, the contractor agrees as follows:
 1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- b. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
4. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
5. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
6. **DEBARMENT STATUS:** By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
7. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
8. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs:** Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
9. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

10. **PAYMENT:**

a. **To Prime Contractor:**

1. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
2. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
3. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
4. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
5. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges, which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty- (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges, which are not in dispute (*Code of Virginia*, § 2.2-4363).

b. **To Subcontractors:**

1. A contractor awarded a contract under this solicitation is hereby obligated:
 - (i) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (ii) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
2. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

11. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

12. **QUALIFICATIONS OF BIDDERS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

13. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

14. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

15. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

- a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
- b. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor.

Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

1. By mutual agreement between the parties in writing; or
 2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 3. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty- (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
16. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the Commonwealth may have.
17. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
18. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article, which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product offered is an equal product, such bid will be considered to offer the brand name product referenced in the solicitation.
19. **TRANSPORTATION AND PACKAGING:** By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
20. **INSURANCE:** By signing and submitting a bid under this solicitation, the bidder certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder further certifies that the contractor and any subcontractors will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 - b. Employer's Liability - \$100,000.
 - c. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
 - d. Automobile Liability - \$1,000,000 per occurrence.
21. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.us) for a minimum of 10 days.

22. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

23. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
24. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders must register in eVA; failure to register will result in the bid being rejected.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
 - b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
 - c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
25. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
26. **SET-ASIDES.** This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. For purposes of award, bidders shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids.
27. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders shall state bid prices in US dollars.
28. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

1. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid, no indication of such sales or services to Catawba Hospital will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
2. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
3. **ASBESTOS:** Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.
4. **AWARD TO OTHER THAN THE LOWEST PRICED BIDDER(S):** An award(s) will be made to the lowest responsive and responsible bidder(s) however; the award may be made to a reasonably priced DMBE-certified small business bidder(s) that is other than the lowest priced bidder(s). Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Commonwealth. The State reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.
5. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for (60) days. At the end of the (60) days the bidder may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
6. **BID PRICES:** Bid shall be in the form of a firm unit price for each item during the contract period.
7. **BID EVALUATION:** Bids will be evaluated on the basis of the total items 1 and 2 as indicated in Section VI, Pricing Schedule. The low Bidder shall be determined by the following hypothetical scenario:

Part 1 – Total full maintenance for one year. \$ _____

Part 2 – Work falling within full service maintenance and repair:

Labor charge: 1 technician @ 40 hrs @ \$ _____ hourly labor rate = \$ _____

1 tech. asst. @ 40 hrs @ \$ _____ hourly labor rate = \$ _____

1 technician @ 6 hrs @ Overtime Rate \$ _____ = \$ _____

1 tech. asst. @ 6 hrs @ Overtime Rate \$ _____ = \$ _____

Total (hypothetical job) \$ _____

8. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either part, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
9. **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the goods/services specified.

Contractor Name: _____ Subcontractor Name: _____
License # _____ Type _____

10. **CONTRACTOR REGISTRATION:** If a contract for construction, removal, repair or improvement of a building or other real property is for seventy thousand dollars (\$70,000) or more, or if the total value of all such contracts undertaken by bidder within any 12-month period is five hundred thousand dollars (\$500,000) or more, the bidder is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for seventy-five hundred dollars (\$7,500) or more but less than seventy thousand dollars (\$70,000), (one thousand dollars [\$1,000] for electrical, plumbing and HVAC work) the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for one-thousand dollars (\$1,000) or more but less than seventy-five hundred dollars (\$7,500) and is not for electrical, plumbing and HVAC work, the bidder is required to be licensed as a "CLASS C CONTRACTOR." The bidder shall place on the outside of the envelope containing the bid and shall place in the bid over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. _____ Specialty _____

Licensed Class B Virginia Contractor No. _____ Specialty _____
Licensed Class C Virginia Contractor No. _____ Specialty _____

If the bidder shall fail to provide this information on his bid or on the envelope containing the bid and shall fail to promptly provide said contractor license number to the Commonwealth in writing when requested to do so before or after the opening of bids, he shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and his bid will not be considered. If a bidder shall fail to obtain the required license prior to submission of his bid, the bid shall not be considered.

11. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
12. **EXTRA CHARGES NOT ALLOWED:** The bid price shall be for complete installation ready for the Commonwealth's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.
13. **IDENTIFICATION OF BID ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid should be returned in a separate envelope or package, sealed and identified as follows:

From: _____
Name of Bidder Due Date Time

Street or Box Number IFB No./RFP No.

City, State, Zip Code IFB/RFP Title

Name of Contract/Purchase Officer or Buyer: Robyn Wright. The envelope should be addressed as directed on Page 1 of the solicitation.

If a bid not contained in the special envelope is mailed, the bidder takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid to be disqualified. Bids may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids should be placed in the envelope.

14. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owner's representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.
15. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.
16. **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.
17. **SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses. If SWAM subcontractors are used, the prime contractor agrees to report the use of SWAM subcontractors by providing the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided.
18. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the Commonwealth reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds, which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.
19. **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of materials not to exceed the increase in the following index/indices: CPI-W, Table 4 section of the consumer Price Index of the United States Bureau of Labor Statistics "Other Services" category. No price increases will be authorized for 365 calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each 365 days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective

only at the beginning of the calendar month following the end of the full 30 day notification period. The contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase which is being passed on to the contractor by the contractor's suppliers.

The purchasing office will notify the using agencies and contractor in writing of the effective date of any increase, which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

20. **PREVENTIVE MAINTENANCE:** The contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.
21. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
22. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE</u>
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23. **RENEWAL OF CONTRACT:** this contract may be renewed by the Commonwealth upon written agreement of both parties for four (4) one (1) successive year periods, under the terms of the current contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall given approximately 60 days prior to the expiration date of each contract period.
- a. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the "Other Services" category of the CPI-W Table 4 section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- b. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(S) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the "Other Services" category of the CPI-W Table 4 section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
24. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
25. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit host available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the bid.
26. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.

The Contractor shall perform his work so as not to interfere with other activities and work being performed in the area. Any interruptions of any type of service shall be coordinated with Catawba Hospital ahead of time. The Contractor shall keep his work and storage area clean and neat, and shall properly dispose of any debris created by his work.

27. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The contract will result in one (1) eVA purchase order(s) with a 1% eVA transaction fee capped as stated below:
- a. DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
- b. Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to

comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

28. **CONTINUITY OF SERVICES:**

- a. The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:
 1. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
 2. To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
 3. That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
- b. The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.
- c. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

29. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

30. **TOBACCO FREE WORKPLACE:**

Contractor acknowledges and certifies that it understands and agrees to adhere to the Agency's tobacco-free workplace policy. Contractor agrees to ensure its employee/subcontractors remain tobacco-free while on Agency grounds and in agency structures, including their personal vehicles when located on facility grounds.

IX. OTHER ATTACHMENTS

- ATTACHMENT A: Location of Elevators, Makes and Models
ATTACHMENT B: Contractor Employee Background
ATTACHMENT C: Firefighter's Service Test Log
ATTACHMENT D: Reference Data Sheet
ATTACHMENT E: Business Associate Contract

**CATAWBA HOSPITAL
CATAWBA, VIRGINIA**

ATTACHMENT A

LOCATION	ELEVATOR NO.	TYPE	MAKE
Building #15	1	Passenger	Geared Traction
Building #15	2	Passenger	Geared Traction
Building #15	3	Service	Geared Traction
Building #16	4	Freight	Hydraulic
Building #17	5	Passenger	Hydraulic

CATAWBA HOSPITAL
CATAWBA, VIRGINIA

ATTACHMENT B

CONTRACTOR EMPLOYEE BACKGROUND

[illegible]

**CATAWBA HOSPITAL
CATAWBA, VIRGINIA**

ATTACHMENT C

FIREFIGHTER'S SERVICE TEST LOG - POST IN MACHINE ROOM

NAME OF BUILDING:

ELEVATORS:

ELEVATOR MAINTENANCE CONTRACTOR:

February 1, 20____ – January 31, 20____

Was test performed satisfactorily? (Y/N)

	Day of Month	Phase I	Phase II	Initials
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
January				

SUBMIT THIS REPORT WITH ALL INVOICES FOR OWNER FILE

**CATAWBA HOSPITAL
CATAWBA, VIRGINIA**

ATTACHMENT D

REFERENCE SHEET

To Be Completed By Bidder

1. **QUALIFICATION OF BIDDER:** The Bidder must have the capability and capacity in all respects to fully satisfy all of the contractual requirements.
2. **YEARS IN BUSINESS:** Indicate the length of time you have been in business providing this type of service:
_____years _____months.
3. **REFERENCES:** Indicate below a list of least three (3) recent references for whom you have provided this type of service. Include the date service was furnished and the name and address of the person the Agency has your permission to contact.

DATE	CLIENT NAME AND ADDRESS	CONTACT PERSON & PHONE NUMBER
(1)		
		()

(2)		
		()

(3)		
		()

**CATAWBA HOSPITAL
CATAWBA, VIRGINIA**

REFERENCE SHEET CONT'D

DATE	CLIENT NAME AND ADDRESS	CONTACT PERSON & PHONE NUMBER
(4)		
		()

(5)		
		()

(6)		
		()

(7)		
		()

(8)		
		()

ATTACHMENT E
COMMONWEALTH OF VIRGINIA
CATAWBA HOSPITAL
CATAWBA, VIRGINIA

Standards for Privacy of Individually Identifiable Health Information

BUSINESS ASSOCIATE CONTRACT

The U.S. Department of Health and Human Services ("HHS") has issued regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities. As a valued BUSINESS ASSOCIATE, we will make available and/or transfer certain information, in conjunction with goods or services that are being provided by the BUSINESS ASSOCIATE to the COVERED ENTITY, which is confidential and must be afforded special treatment and protection.

THIS CONTRACT:

This Business Associate Contract ("Contract") is made as of this _____ day of _____, 2011, by Catawba Hospital, an Agency of the Commonwealth of Virginia (herein referred to as "Covered Entity") and _____ (herein referred to as "Business Associate").

WITNESSETH:

WHEREAS, THE COVERED ENTITY will make available and/or transfer to the BUSINESS ASSOCIATE certain information, in conjunction with goods or services that are being provided by the BUSINESS ASSOCIATE to the COVERED ENTITY, that is confidential and must be afforded special treatment and protection. WHEREAS, THE BUSINESS ASSOCIATE will have access to and/or receive from the COVERED ENTITY certain information that can be used or disclosed only in accordance with this CONTRACT and the HHS Privacy Regulations.

WHEREAS, THE COVERED ENTITY and THE BUSINESS ASSOCIATE agree to limits on use and disclosure established by the Terms and Conditions of this Contract. The BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the information provided or made available by the COVERED ENTITY for any purpose than as expressly permitted or required by the Contract.

The Terms and Conditions of this Contract shall be effective as of _____, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions.

I. DEFINITIONS:

As used in this Contract, the terms below will have the following meanings:

- (a) *Business Associate* shall mean (name of business).
- (b) *Business Associate Contract (BAC)* means a written contract between a covered entity and its Business Associate. The contractual provisions provide that the Business Associate shall:
 - ❖ only use or disclose protected health information (PHI) as permitted under the contract and not in a manner that would violate the Privacy Standards if such actions were taken by the covered entity;
 - ❖ use appropriate safeguards to prevent use or disclosure of PHI except as permitted by the contract;
 - ❖ report any known misuse of PHI to the covered entity;
 - ❖ impose the same requirements on its subcontractors and agents;

- ❖ make PHI and an accounting of disclosures available to individuals as required by the HIPAA Privacy Standards;
 - ❖ make its internal practices, books and records relating to use and disclosure of PHI available to the Department of Health and Human Services Secretary; and
 - ❖ at termination of the contract; if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of the covered entity that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- (c) *Covered Entity* shall mean Catawba Hospital, an agency of the Commonwealth of Virginia.
- (d) *Disclosure* shall mean the release, transfer, provision or access to, or divulging in any other manner of information outside the entity holding the information.
- (e) *HIPAA* is the acronym for the Health Insurance Portability and Accountability Act of 1996, which is a federal law that allows persons to qualify immediately for comparable health insurance coverage when they change their employment relationships. Title II, Subtitle F, of HIPAA gives the federal Department of Health and Human Services the authority to mandate and specify the use of standards for the electronic exchange of health care data; to specify what medical and administrative code sets should be used within those standards; to require the use of national identification systems for health care patients, providers, payers (or plans), and employers (or sponsors); and to specify the types of measures required to protect the security and privacy of personally identifiable health care information. Also known as the Kennedy-Kasselbaum Bill, the Kasselbaum-Kennedy bill, K2, or Public Law 104-191.
- (f) *Individual* means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (g) *Individually Identifiable Health Information (IIHA)*: IIHA shall mean information that is a subset of health information, which can include demographic information collected from an individual; and
- ❑ is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - ❑ relates to the past, present, or future physical or mental health care to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and
 - identifies the individual, or
 - with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (h) *Interpretation*: Any ambiguity in this Contract shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
- (i) *Memorandum of Understanding (MOU)* means an arrangement between a covered entity and its Business Associate that can be used in lieu of a BAC if it contains provisions that are sufficient to accomplish the same objectives as a BAC for safeguarding the use and disclosure of PHI. A MOU is typically used by two government agencies with a working relationship that is required by law, when it is not feasible for such agencies to carry out all of the contractual requirements of a BAC.
- (j) *Protected Health Information (PHI)* means individually identifiable health information:
- ❑ transmitted by electronic media;
 - ❑ maintained in any medium described in the definition of electronic media at 45 CFR 162.103;
 - ❑ transmitted or maintained in any other form or medium.

PHI excludes individually identifiable health information in:

- education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and
 - records described at 20 U.S.C. 132g(a)(4)(B)(iv). *Psychotherapy notes* means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group joint, or family counseling session and that are separated from the rest of the individuals medical record.
- (k) *Privacy Officer* means the covered entity's designated official who is responsible for the development and implementation of its HIPAA privacy policies and procedures.
- (l) *Psychotherapy notes* excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.
- (m) *Regulatory References:* A reference in this Contract to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (n) *Required by law* means a mandate contained in law that compels a covered entity to make a use or disclosure of protected health information and that is enforceable in a court of law.
- (o) *Required by law* includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- (p) *Secretary* shall mean the Secretary of the Department of Health and Human Services or his designee.
- (q) *Survival:* The respective rights and obligations of Business Associate under Section 8, "Effect of Termination" of this Contract shall survive the termination of the Contract.
- (r) *Treatment* means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.
- (s) *Use* means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
- (t) *Catch-all definition:* Terms used, but not otherwise defined, in this Contract shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

II. GENERAL CONDITIONS:

1. PROVISIONS FOR BUSINESS ASSOCIATE CONTRACTS:

- 1.1 HIPAA privacy regulations allow Catawba Hospital to share PHI with Business Associates who are engaged to assist in carrying out various health care activities when Catawba Hospital has entered into a Business Associate contract with the individual Business Associate. Such contracts assure

that the Business Associate will (i) use the PHI only for the purpose for which it was engaged; (ii) safeguard the information from misuse; and (iii) help Catawba Hospital to comply with its duty to provide patients or residents with access to health information about them and a history of certain disclosures.

2. *THE PARTIES:*

- 2.1 Hereby agree that Business Associate shall be permitted to use and/or disclose information provided or made available from the covered entity while protecting the confidentiality and integrity of PHI required law, professional ethics, and accreditation requirements, for the following stated purposes:
- (a) Business Associate is permitted to use information if necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate.
 - (b) Business Associate is permitted to disclose information received from Covered Entity for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, provided the disclosure is required by law; or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.
 - (c) Business Associate is also permitted to use or disclose information to provide data aggregation services, as that term is defined by 45 C.F.R 164.501, relating to the healthcare operations of the covered entity.
 - (d) Business Associate will establish and maintain appropriate safeguards to prevent any use or disclosure of the information, other than as provided for by the contract.

3. *USE AND DISCLOSURE OF PHI:*

- 3.1 Business Associate shall not use PHI otherwise than as expressly permitted by this Contract, or as required by law. However, Business Associate may use PHI for purposes of managing its internal business processes relating to its functions under this Contract.
- 3.2 Business Associate shall implement and maintain appropriate safeguards to prevent the use and disclosure of PHI, other than as provided in this Contract. Upon reasonable request, Business Associate shall give Covered Entity access for inspection and copying to Business Associate's facilities used for the maintenance and processing of PHI, and to its books, records, practices, policies and procedures concerning the use and disclosure of PHI, for the purpose of determining Business Associate's compliance with this Contract.
- 3.3 Business Associate shall maintain an ongoing log of the details relating to any disclosures of PHI it makes (including, but not limited to, the date made, the name of the person or organization receiving the PHI, the recipient's address, if known, a description of the PHI disclosed, and the reason for the disclosure). Business Associate shall, within thirty- (30) days of Covered Entity's request, make such log available to Covered Entity, as needed for Covered Entity to provide a proper accounting of disclosures to its patients.

- 3.4 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity agree in writing to the same restrictions, terms, and conditions relating to PHI that apply to the Business Associate in this Contract. Covered Entity shall have the option to review and approve all such written agreements between Business Associate and its agents and subcontractors prior to their effectiveness.
- 3.5 Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity available to the Secretary of DHHS or its designee, in a time and manner designated by the Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with HIPAA and with the Privacy Regulations issued pursuant thereto. Business Associate shall provide Covered Entity with copies of any information it has made available to DHHS under this section of this Contract.
- 3.6 Business Associate shall provide to Covered Entity or an Individual within thirty- (30) days of request by Covered Entity, information collected in accordance with Section 3.3 of this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.
- 3.7 Business Associate shall report to Covered Entity within thirty- (30) days of discovery, any use or disclosure of PHI made in violation of this Contract or any law. Business Associate shall implement and maintain sanctions for any employee, subcontractor, or agent who violates the requirements in this Contract or the HIPAA privacy regulations. Business Associate shall, as requested by Covered Entity, take steps to mitigate any harmful effect of any such violation of this Contract.
- 3.8 Business Associate shall make PHI available for amendment and correction and shall incorporate any amendments or corrections to PHI within thirty- (30) days of notification by Covered Entity.
4. *DISCLOSURE OF PHI REQUIRED IN CONTRACTS FOR GOODS & SERVICES:*
- 4.1 When Covered Entity contract for goods or services, and disclosure of PHI is a result but not the primary function of such contractual *relationship*, the individual or Entity contracting with the Covered Entity must comply with requirements for Business Associates consistent with HIPAA regulations.
- 4.2 Each Covered Entity contract office shall ensure that all contracts executed by the Covered Entity for goods and services, which also require the Covered Entity to disclose PHI, include provisions to safeguard PHI consistent with HIPAA requirements for Business Associates.
- Covered Entity contract offices shall administer such contracts in accordance with its standard office procedures.
 - Each Covered Entity contract officer shall consult with the Covered Entity's privacy official to resolve any issues regarding the compliance of such contracts with HIPAA provisions.
- 4.3 *Obligations of Covered Entity:*
- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to

such notice.

- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- (d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. *EXCEPTIONS TO BAC REQUIREMENT:*

5.1 BACs are not required when:

- The Covered Entity discloses PHI to a health care provider for treatment purposes.
- The financial institution acting on behalf of the Covered Entity receives, uses or discloses PHI to process financial transactions by debit, credit or other payment card; clears checks; initiates or processes electronic fund transfers; or conducts any other activity that directly facilitates or effects the transfer of funds for compensation of health care, when such transaction is conducted by patients or residents of Covered Entities facilities.
- Other laws or regulations govern a Business Associate, and contain requirements sufficient to accomplish the purpose of the BAC.

5.2 When a Business Associate is required by law to perform certain functions or activities included in the definition of "Business Associate" on behalf of the Covered Entity, PHI may be disclosed to that entity to the extent necessary to comply with such legal mandate without entering into a BAC. In such instances:

- A MOU should be obtained; or
- The responsible staff should document the inability and reasons that a MOU has not been obtained.

5.3 When it is not possible to terminate the MOU, or impractical to include a termination clause within an MOU, the Covered Entity or a facility shall report known violations to the chief privacy officer for reporting to the Secretary of Health and Human Services.

6. *BUSINESS ASSOCIATE CONTRACT BREACH:* A BAC breach occurs whenever a Business Associate violates a material term or condition of the BAC.

6.1 When the Covered Entity becomes aware of a breach, it shall:

- Take reasonable steps to cure the breach, or
- Terminate the contract, or
- Report the breach to the chief privacy officer for reporting to the Secretary of Health and Human Services, if termination would be unreasonably burdensome (i.e. no viable alternatives are available).

"Reasonable steps" will vary with the circumstances and the nature of the business relationship and shall be taken in consultation with the chief privacy officer in the Covered Entity.

"Unreasonably burdensome" does not mean it is merely more convenient or less costly to do business with the Business Associate in breach of the contract than with other potential Business

Associates.

Any whistle blowing disclosure by the Business Associate does not impose a duty on the Covered Entity to correct, cure, or terminate the relationship.

III. *TERMINATION FOR CAUSE:*

- (a) Covered Entity may immediately terminate this Contract if Covered Entity determines that Business Associate has violated a material term of this Contract. This Contract shall remain in effect unless terminated for cause by Covered Entity with immediate effect, or until terminated by either party with not less than thirty- (30) days prior written notice to the other party, which notice shall specify the effective date of the termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Contract before the effective date of termination. Within thirty- (30) days of expiration or earlier termination of this Contract, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. Business Associate shall provide a written certification that all such PHI has been returned or destroyed, whichever is deemed appropriate. If such return or destruction is infeasible, Business Associate shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this Contract shall survive with respect to such PHI.
- (b) Covered Entity may choose to provide an opportunity for Business Associate to cure the violation with written notice of the existence of the violation and provide Business Associate with thirty- (30) days to cure said violation upon mutually agreeable terms. Failure by Business Associate to cure said violation within the terms as mutually agreed shall be grounds for immediate termination and the provisions provided in paragraph (a) of this section shall apply.

IV. *AMENDMENT:*

Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to the Business Associate, amend this Contract in such manner as Covered Entity determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty- (30) days thereafter, either of them may terminate this Contract by written notice to the other.

V. *NOTICES:*

Whenever under the Contract one party is required to give notice to the other, such notice shall be deemed given if mailed by first class United States mail, postage prepaid, to the following:

Business Associate:	

Covered Entity:	Catawba Hospital
	Attn: Robyn J. Wright, CPPB, VCO
	Director of Purchasing & Contracting
	P. O Box 200
	Catawba, Virginia 24070

Notice of a change in address of one of the parties shall be given in writing to the other party as provided above.

VI. *DISPUTES:*

If any controversy, dispute or claim arises between the Parties with respect to this Contract, the Parties shall make good faith efforts to resolve such matters informally.

VII. *FEES:*

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Contract, each party shall bear their own legal expenses and the other cost incurred in that action or proceeding.

VIII. *ENTIRE AGREEMENT:*

The Contract consists of this document, and constitutes the entire agreement between the Parties. There are no understandings or agreements relating to this Contract which are not fully expressed in this Contract and no change, waiver or discharge of obligations arising under this Contract shall be valid unless in writing and executed by the Party against whom such change, waiver, or discharge is sought to be enforced.

IN WITNESS WHEREOF:

BUSINESS ASSOCIATE and COVERED ENTITY have caused this Contract to be signed and delivered by their duly authorized representatives, as of the date set forth above.

BUSINESS ASSOCIATE

COVERED ENTITY

Signature

Signature

Don Obenshain

Printed Name

Printed Name

Compliance Officer

Title

Title

Date

Date

**COMMONWEALTH OF VIRGINIA
CATAWBA HOSPITAL
BUSINESS ASSOCIATE CONTRACT
ADDENDUM**

Privacy Rule and the Security Rule

THIS ADDENDUM governs the provision of Protected Health Information (PHI) (as defined in 45 C.F.R. § 164.501 by Catawba Hospital, an Agency of the Commonwealth of Virginia (Covered Entity) and _____(Business Associate) for the purposes set forth and pursuant to which the Business Associate is performing functions or tasks on behalf of the Covered Entity.

WHEREAS, the Covered Entity is bound by the regulations implementing the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”); and 45 C.F.R. Part 164, Subpart C, the Security Standards for the Protection of Electronic Protected Health Information (“Security Rule”);

WHEREAS, Near Southwest Preparedness Alliance (NSPA), as a recipient of PHI from the Covered Entity, is a “Business Associate” as that term is defined in the Privacy Rule;

WHEREAS, pursuant to the Privacy Rule and the Security Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

WHEREAS, the purpose of this Addendum is to comply with the requirements of the Privacy Rule and the Security Rule, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §§164.314(a), 164.502(e), §164.504(e), and as may be amended.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- I.** Definitions: Unless otherwise provided in this Addendum, capitalized terms have the same meaning as set forth in the Privacy Rule or the Security Rule.
- II.** Scope of Use and Disclosure by Business Associate of Protected Health Information
 - (a) Business Associate shall be permitted to Use and Disclose PHI that is disclosed to it by the Covered Entity as necessary to perform its obligations under the Business Associate Contract.
 - (b) Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Addendum or Required by Law, the Business Associate may:
 - Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of the Business Associate;
 - Disclose the PHI in its possession to a third party for the purpose of the Business Associate’s proper management and administration or to fulfill any legal responsibilities of the Business Associate; provided, however, that the Disclosures are Required by Law or the Business Associate has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify the Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached;
 - Aggregate the PHI with that of other Covered Entities for the purpose of providing the Covered Entity

with data analyses relating to the Health Care Operations of the Covered Entity, the Business Associate may not Disclose the PHI of one Covered Entity to another Covered Entity without the written authorization of the Covered Entity involved; and

- De-identify any and all PHI created or received by the Business Associate under this Addendum; provided that the de-identification conforms to the requirements of the Privacy Rule.

III. Obligations of the Business Associate. In connection with its Use and Disclosure of PHI, the Business Associate agrees that it will:

- (a) Use or further Disclose PHI only as permitted or required by this Addendum or as Required by Law.
- (b) Use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this Addendum.
- (c) To the extent practicable, mitigate any harmful effect that is known to the Business Associate of a Use or Disclosure of PHI by the Business Associate in violation of this Addendum.
- (d) Report to the Covered Entity any Use or Disclosure of PHI not provided for by this Addendum of which the Business Associate becomes aware.
- (e) Require contractors or agents to whom the Business Associate provides PHI to agree to the same restrictions and conditions that apply to the Business Associate pursuant to this Addendum.
- (f) Make available to the Secretary of Health and Human Services the Business Associate's internal practices, books and records relating to the Use and Disclosure of PHI for purposes of determining the Covered Entity's compliance with the Privacy Rule, subject to any applicable legal privileges.
- (g) Within (15) days of receiving a request from the Covered Entity, make available the information necessary for the Covered Entity to make an accounting of Disclosures of PHI about an individual.
- (h) Within ten (10) days of receiving a written request from the Covered Entity, make available PHI necessary for the Covered Entity to respond to Individuals' requests for access to PHI about them in the event that the PHI is the Business Associate's possession constitutes a Designated Record Set.
- (i) Within fifteen (15) days of receiving a written request from the Covered Entity incorporated any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in the Business Associate's possession constitutes a Designated Record Set.
- (j) Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity, and make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary of HHS for purposes of determining the Covered Entity's compliance with the Security Rule.
- (k) Ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect the Electronic PHI; and
- (l) Promptly report to the Covered Entity any security incident with respect to Electronic PHI of which it becomes aware.

IV. Obligations of the Covered Entity. The Covered Entity agrees that it:

- (a) Has included, and will include, in the Covered Entity's Notice of Privacy Practices required by the Privacy Rule that the Covered Entity may Disclose PHI for Health Care Operations purposes.
- (b) Has obtained, and will obtain, from Individuals' consents, authorizations and other permissions necessary or Required by Laws applicable to the Covered Entity for the Business Associate and the Covered Entity to fulfill their obligations under the Business Associate Contract and this Addendum.
- (c) Will promptly notify the Business Associate in writing of any restrictions on the Use and Disclosure of PHI about the Individuals that the Covered Entity has agreed to that may affect the Business Associate's ability to perform its obligations under the Business Associate Contract and this Addendum.
- (d) Will promptly notify the Business Associate in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes or revocation may affect the Business Associate's ability to perform its obligations under the Business Associate Contract or this Addendum.

V. Termination.

- (a) Termination for Breach. The Covered Entity may terminate this Addendum if the Covered Entity determines that the Business Associate has breached a material term of this Addendum. Alternatively, the Covered Entity may choose to provide the Business Associate with notice of the existence of an alleged material breach and afford the Business Associate an opportunity to cure the alleged material breach. In the event the Business Associate fails to cure the breach to the satisfaction of the Covered Entity, the Covered Entity may immediately thereafter terminate this Addendum.
- (b) Automatic Termination. This Addendum will automatically terminate upon the termination of the Business Associate Contract.
- (c) Effect of Termination.
 - i. Termination of this Addendum will result in termination of the Business Associate Contract;
 - ii. Upon termination of this Addendum or the Business Associate Contract, the Business Associate will return or destroy all PHI received from the Covered Entity or created or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains and retains no copies of such PHI; provided that if such return or destruction is not feasible; the Business Associate will extend the protections of this Addendum to the PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

VI. Amendment. The Business Associate and the Covered Entity agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and the Security Rule.

VII. Survival. The obligations of the Business Associate under section V.c (ii) of this Addendum shall survive any termination of this Addendum.

VIII. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

IX. Effective Date. This Addendum shall be effect on _____.

BUSINESS ASSOCIATE

COVERED ENTITY

Signature

Signature

Don Obenshain

Printed Name

Printed Name

Compliance Officer

Title

Title

Date

Date

**COMMONWEALTH OF VIRGINIA
CATAWBA HOSPITAL
BUSINESS ASSOCIATE CONTRACT
ADDENDUM**

Breach Notification Amendment

This Amendment to Business Associate Contract (the Amendment), is entered into as of the ____ day of _____ by and between _____ (Business Associate) and Catawba Hospital (Covered Entity), an agency of the Commonwealth of Virginia, Department of Behavioral Health and Development Services. Covered Entity and Business Associate shall collectively be known herein as the “Parties”.

WHEREAS, the U.S. Department of Health and Human Services (HHS) has issued regulations, pursuant to the Health Information Technology for Economic and Clinical Health (HITECH) Act, passed as part of the American Recovery and Reinvestment Act of 2009 (ARRA) requiring health care providers, health plans, and other entities covered by the Health Insurance Portability and Accountability Act (HIPAA), notify individuals when their health information is breached and also requires notification to the HHS Secretary and to the media in specified circumstances; and

WHEREAS, Covered Entity and Business Associate are parties to a Business Associate Contract and the HIPAA Security Rule (45.C.F.R., Parts 160, 162, & 164) and ARRA (P.L. 111-5) requiring that Covered Entity enter into this Amendment with Business Associate in order to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information (EPHI) and establishes the procedures for notifying individuals, the media and the U.S. Secretary of HHS when a breach of protected health information occurs; and

WHEREAS, Business Associate and its employees, affiliates, agents or representatives access, create, obtain or maintain EPHI in carrying out their obligations to Covered Entity; and

WHEREAS, the Parties desire to enter into this Amendment to obligate covered entities to notify affected individuals in writing of security breaches involving their protected health information and to amend any agreements between the Business Associate and Covered Entity with the execution of this Amendment;

NOW, THEREFORE, in consideration of the foregoing and mutual covenants hereinafter set forth, and for other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Definitions

The following definitions shall apply to this Amendment.

Breach The acquisition, access, use, or disclosure of protected health information in a manner not permitted by the Privacy Rule, and which compromises the security or privacy of the protected health information.

- For purposes of this definition, “*compromises the security or privacy of the protected health information*” means poses a significant risk of financial, reputational, or other harm to the individual (§13400 HITECH).

Individual Shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502 (g).

Designated 1) A group of records maintained by or for a covered entity that is: (i) The medical records and billing

Record Set	records about individuals maintained by or for a covered health care provider; (ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for the covered entity to make decisions about individuals (45 CFR § 164.501).
Unsecured Protected Health Information	Protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in guidance issued by the HHS Secretary. The HHS Secretary has specified encryption and destruction as the only two (2) methodologies which render PHI unusable, unreadable, or indecipherable.

Obligations of Business Associate

1. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the HIPAA Security Rule, 45 C.F.R.; and
2. Business Associate shall promptly report to Covered Entity any “breach incident” of which it become aware, as such term is defined in the HIPAA Security Rule. At the request of Covered Entity, Business Associate shall identify:
 - i. The identity of each individual whose unsecured protected health information have been, or is reasonably believed to be breached;
 - ii. All other information available that Covered Entity is required to include in its notification to the individual at the time of notification or promptly thereafter as information becomes available; and
 - iii. Depending on the circumstances – immediate notification of the breach, and follow-up when required information is available and without unreasonable delay, but not later than 60 calendar days.
 - Notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the business associate to have been, accessed, acquired, used or disclosed during the breach.
 - Business associate shall also provide Covered Entity with any other available information at the time the business associate makes notification to Covered Entity or promptly thereafter as information becomes available:
 - a) A brief description of what happened, including the date of the breach;
 - b) A description of the types of unsecured PHI that were involved in the breach;
 - c) Any steps the business associate believes individuals should take to protect themselves from potential harm resulting from the breach; and
 - d) A brief description of what business associate is doing to investigate the breach, mitigate harm to individuals, and protect against any future breaches.
3. Impose the same requirements and restrictions contained in this Amendment on its subcontractors and agents to whom Business Associate provides unsecured PHI received from, or created or received by a Business Associate on behalf of Covered Entity.
4. Make its internal practices, books, and records relating to use and disclosure of unsecured PHI received from, or created or received by a Business Associate on behalf of Covered Entity, available

to the Secretary of the U.S. Department of Health and Human Services Secretary for the purposes of determining compliance with 45 CFR Parts 160 and 164, subparts A and E.

Obligations of Covered Entity

1. Covered Entity shall conduct a risk analysis and assessment on each incident of an impermissible use or disclosure to determine whether a breach as occurred. This process must examine:
 - i. whether there was a *compromise* to the security or privacy of the protected health information;
 - ii. whether a significant risk of harm to the individual resulted;
 - iii. whether immediate steps were taken to mitigate the impermissible use or disclosure; and
 - iv. the type and amount of protected health information involved.
2. Once Covered Entity determines a breach has occurred, notification shall be made without any unreasonable delay, and shall never be made more than 60 calendar days after the breach has been discovered, except in circumstances where law enforcement requests a delay as outlined below. The clock begins when the incident occurs, not when an investigation of the event is completed even if there are questions regarding whether the incident actually meets the definition of a breach. Notification shall be made:
 - i. to the Secretary of Health and Human Services; and
 - ii. to the media in certain circumstances.

Delayed notification exception:

If a law enforcement official states that the required notification, notice, or posting of the breach would impede a criminal investigation or cause damage to national security, Covered Entity shall:

- i. if the statement is in writing and specifies the time frame for which a delay is required, delay such notification, notice, or posting for the time period specified by the law enforcement official; or
 - ii. if the statement is made orally, temporarily delay any notification, notice, or posting no longer than 30 days from the date of the oral statement, unless a written statement is received from a law enforcement official within the 30 day time frame that specifies the time for which a delay is required. Covered Entity shall document the statement, as well as the identity of the official making the statement.
3. In instances where a breach of the security of Covered Entity information system containing unencrypted or unprotected personal information has caused or is reasonably believed to have caused or will cause identity theft or another fraud to any resident of the Commonwealth, the Privacy Officer shall notify the Office of the Attorney General and any affected residents pursuant to §18.2-186-6(B) of the *Code of Virginia*.
 - In the event that Covered Entity provide notice to more than 1,000 residents of the Commonwealth at one time pursuant to §18.2-186-6(E) of the *Code of Virginia*, the Privacy Officer shall notify, without unreasonable delay the Office of the Attorney General and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis.
 4. Individual notification shall be provided in the following formats as the situation dictates: (i) written notice and/or (ii) substitute notice. In cases requiring urgency because of possible imminent misuse of the unsecured PHI, notification may be provided to individuals by telephone or other means, as

appropriate, in addition to the written notice and/or substitute notice.

5. A notification of breach shall be written in plain language and include the following five elements:
 - i. a brief description of what happened, the date of the breach, and date of discovery, if known;
 - ii. a description of the types of unsecured PHI involved in the breach (i.e. full name, social security, date of birth, home address, account number, diagnosis, disability code, other types of information that may have been involved;
 - iii. any steps an individual should take to protect him from potential harm resulting from the breach;
 - iv. a brief description of what Covered Entity is doing to investigate the breach, to mitigate harm to individuals, and to protect against further breaches; and
 - v. contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, Web-site, or postal address.

Written notification shall be made by first-class mail to individuals at their last-known address, or, if the individual agrees to the electronic notice and such agreement has not been withdrawn, by electronic mail. Multiple mailings may be made as information regarding the breach becomes available. If Covered Entity knows the individual is deceased and has the address of the next of kin or authorized representative, the notification shall be provided by first-class mail to the next of kin or authorized representative.

Substitute Notification:

If Covered Entity does not have sufficient contact information to provide written notification to an individual, it shall provide a substitute notice reasonably projected to reach the individual. Substitute notice does not need to be provided in cases where there is insufficient contact information that precludes notification to the next of kin or authorized representative of an individual.

Termination

1. **Termination for Breach.** Covered Entity may terminate this Addendum if Covered Entity determines that the Business Associate has breached a material term of this Addendum. Alternatively, Covered Entity may choose to provide the Business Associate with notice of the existence of an alleged material breach and afford the Business Associate an opportunity to cure the alleged material breach. In the event the Business Associate fails to cure the breach to the satisfaction of Covered Entity, the Covered Entity may immediately thereafter terminate this Addendum.
2. **Automatic Termination.** This Addendum will automatically terminate upon the termination of the Business Associate Contract.
3. **Effect of Termination.**
 - i. Termination of this Addendum will result in termination of the Business Associate Contract;
 - ii. Upon termination of this Addendum or the Business Associate Contract, the Business Associate will return or destroy all PHI received from Covered Entity or created or received by the Business Associate on behalf of Covered Entity that the Business Associate still maintains and retains no copies of such PHI; provided that if such return or destruction is not feasible; the Business Associate will extend the protections of this Addendum to the PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

Amendment

The Business Associate and Covered Entity agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Security Rule.

Survival

The obligations of the Business Associate under this Addendum shall survive any termination of this Addendum.

Ratification of Agreement: Except as expressly modified herein, all other items and conditions of the Business Associate Contract shall remain in full force and effect as written, and are hereby ratified and confirmed by Covered Entity and the Business Associate.

The Business Associate Contract and this Amendment, as well as previous Amendments, represent the entire agreement of the parties with respect to the subject matter thereof. The Amendment is binding on and shall insure to the benefit of Covered Entity and the Business Associate and their respective legal representatives, successors and permitted assigns. Neither this amendment nor the contract may be amended, except by a written agreement signed by both parties.

Intending to be legally bound, the Parties hereto have duly executed this Amendment as of the date first written above.

BUSINESS ASSOCIATE

COVERED ENTITY

Signature

Signature

Don Obenshain

Printed Name

Printed Name

Compliance Officer

Title

Title

Date

Date